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he waived any objection he might fairly have made to any of the work, was misleading because failing to define what acts would indicate such an acceptance, and what acts would indicate such a waiver, especially where the court also limited the alleged waiver to an intent to waive, knowing at the time that he was waiving his rights, and that it should plainly appear that he knew his rights and intended to waive them.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 93, 1829-1844; Dec. Dig. § 353.\* 7 Va.-W. Va. Enc. Dig. 716; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 512.]

**13. Appeal and Error (§ 1064\*)—Prejudicial Error—Misleading Instructions.**—Any instruction calculated to mislead the jury, whether arising from ambiguity or any other cause, is ground for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4219, 4221-4224; Dec. Dig. § 1064.\* 7 Va.-W. Va. Enc. Dig. 726; 14 Va.-W. Va. Enc. Dig. 562; 15 Va.-W. Va. Enc. Dig. 509.]

Error to Circuit Court of City of Richmond.

Action by W. A. Chesterman against John G. Scott, as executor of W. H. Scott, deceased. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*A. G. Collins* and *R. E. Scott*, both of Richmond, for plaintiff in error.

*Meredith & Cocke*, of Richmond, for defendant in error.

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JOHNSTON et al. v. COMMONWEALTH ex rel. PERRY.

June 10, 1915. On Petition to Rehear, June 24, 1915.

[85 S. E. 566.]

**1. Insane Persons (§ 42\*)—Committee—Settlement of Accounts—Conclusiveness.**—Under Code 1904, § 2699, providing that accounts of committees of insane persons before the commissioner of accounts shall, after confirmation, be taken to be correct, except so far as it might be surcharged and falsified in a suit in proper time, in a suit to recover from the committee and his surety the amount charged against him on settlement of his account before the commissioner of accounts, it cannot be shown that the amount had been legitimately expended at the time of the settlement.

[Ed. Note.—For other cases, see Insane Persons, Cent. Dig. §§ 64-67; Dec. Dig. § 42.\* 7 Va.-W. Va. Enc. Dig. 690; 14 Va.-W. Va. Enc. Dig. 559; 15 Va.-W. Va. Enc. Dig. 507.]

**2. Insane Persons (§ 42\*)—Committee—Settlement of Accounts—Grounds for Opening.**—A bill, merely seeking to correct an error

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

which it was alleged the commissioner of accounts made in his settlement of the accounts of a committee of an insane person, but stating no grounds of fraud, accident, or mistake, is not sufficient to reopen the settlement.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 64-67; Dec. Dig. § 42.\* 7 Va.-W. Va. Enc. Dig. 690; 14 Va.-W. Va. Enc. Dig. 559; 15 Va.-W. Va. Enc. Dig. 507.]

Error to Court of Law and Chancery of City of Norfolk.

Action by Lillian Perry, administratrix, against R. M. Johnston, committee, and other. From a judgment for plaintiff, defendant brings error. Affirmed.

*R. R. Hicks*, of Norfolk, for plaintiffs in error.

*Jas. G. Martin*, of Norfolk, for defendants in error.

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BLACKSTONE MFG. CO. *v.* ALLEN.

June 10, 1915.

[85 S. E. 568.]

**1. Logs and Logging (§ 3\*)—Sale of Standing Timber—Title—Forfeiture.**—A contract of sale of standing timber to cut and remove does not pass absolute title to the timber until the purchaser cuts and removes the same within the time allowed by the contract.

[Ed. Note.—For other cases, see *Logs and Logging*, Cent. Dig. §§ 6-12; Dec. Dig. § 3.\* 13 Va.-W. Va. Enc. Dig. 220; 14 Va.-W. Va. Enc. Dig. 1024; 15 Va.-W. Va. Enc. Dig. 1005.]

**2. Logs and Logging (§ 3\*)—Sale of Standing Timber—Contracts—Construction—"The Yearly Interest on the Purchase Price."**—A contract of sale of standing timber, which gives the purchaser seven years within which to cut and remove the timber, and which gives him an additional three years, or so much as he may desire, provided he pays "the yearly interest on the purchase price" of the timber, provides for an extension period; but the phrase, "the yearly interest on the purchase price" means the interest for one year on the price and to obtain an extension the purchaser must pay interest for one year.

[Ed. Note.—For other cases, see *Logs and Logging*, Cent. Dig. §§ 6-12; Dec. Dig. § 3.\* 13 Va.-W. Va. Enc. Dig. 220; 14 Va.-W. Va. Enc. Dig. 1024; 15 Va.-W. Va. Enc. Dig. 1005.]

**3. Logs and Logging (§ 3\*)—Sale of Standing Timber—Extension of Time—Conditions—Waiver.**—A grantor in a contract of sale of standing timber to be cut and removed within a specified time, and an additional time given on the purchaser paying yearly interest on the price, may waive payment of the yearly interest both as to time

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.